

In the Matter of RELIANCE MANUFACTURING COMPANY and AMALGAMATED CLOTHING WORKERS OF AMERICA (C. I. O.)

In the Matter of RELIANCE MANUFACTURING COMPANY and AMALGAMATED CLOTHING WORKERS OF AMERICA (C. I. O.)

*Cases Nos. 18-C-1048 and 18-R-937, respectively.—Decided
February 28, 1945*

DECISION

AND

ORDER

Pursuant to a Decision and Direction of Election of the National Labor Relations Board,¹ herein called the Board, an election was conducted on April 26, 1944, among the employees of Reliance Manufacturing Company, herein called the respondent, at its plant at Anamosa, Iowa, to determine whether or not they desired to be represented by Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, herein called the Union, for the purposes of collective bargaining. The Union lost the election. On May 2, 1944, the Union filed objections to the election, alleging that the respondent had engaged in unfair labor practices prior to the election, and requesting that the election therefore be set aside. Thereafter, the Regional Director issued his Report on Objections, in which he found that the objections raised substantial and material issues with respect to the validity of the election, and recommended that a hearing be held on such objections.

Upon charges filed by the Union alleging that the respondent had engaged in unfair labor practices, a complaint was issued by the Board.

On May 27, 1944, the Board issued an order consolidating the above proceedings, and directing that a hearing be held on the objections to the election and on the alleged unfair labor practices. A hearing was held before a Trial Examiner on June 27 and 28, 1944, in Anamosa, Iowa, in which the Board, the respondent, and the Union participated by their representatives. The Board has reviewed the Trial Examiner's rulings on motions and on objections to the admission of evidence, and finds that no prejudicial error was committed. The rulings are hereby affirmed.

¹ 55 N. L. R. B. 981

60 N. L. R. B., No. 162.

On September 21, 1944, the Trial Examiner issued his Intermediate Report, a copy of which is attached hereto, in which he found that the respondent had engaged in, and was engaging in, certain unfair labor practices, and recommended that it cease and desist therefrom and take certain affirmative action. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions. Oral argument was held before the Board at Washington, D. C., on December 20, 1944.

The Board has considered the Intermediate Report, the exceptions² and brief, and the entire record, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except insofar as they are inconsistent with our findings and order hereinafter set forth.

1. On the basis of the circumstances mentioned below, we agree with the Trial Examiner's conclusion that the respondent's action in denying the request of employees Nichols, Moore, Norton, and Barker for permission to leave the plant for the purpose of testifying at the representation proceedings involving the respondent's employees,³ was motivated by its desire to interfere with said proceeding and by its anti-union animus, and constituted a discriminatory application

² It is to be noted that counsel for the respondent stated at oral argument before the Board that the respondent's exceptions to the Intermediate Report are not addressed to the Trial Examiner's findings of violation of Section 8 (1) of the Act in connection with the respondent's conduct and statements other than those dealing with the respondent's deprivation of certain employees of their seniority rights and the discharge of Forelady Seeley, which matters are treated below.

³ We concur in the Trial Examiner's finding that the respondent knew that the employees in question desired to leave the plant in order to testify at the representation hearing. Nichols' credible testimony is that she advised Forelady Seeley that the reason for her request to leave was that she "was to be a witness in National Labor Relations [Board] hearing," and Moore, according to the latter's credible testimony, advised Seeley that she was "asked to attend the hearing of the Labor Board" and "was to go." Forelady Seeley's credible testimony is that she told Foreman Powers "what they [the employees] wanted the [leave] slips for." We believe it highly improbable that Seeley, in submitting Nichols' and Moore's requests to Powers, failed to mention such a persuasive reason in support of their requests as the circumstance that they were requested to appear as witnesses at the hearing. But even if Seeley had failed to mention that to Powers, it seems unlikely that Powers, who knew of the scheduled hearing and of the respondent's decision not to participate therein, would have failed to ask Seeley the reason for their desire to go to the hearing. Further, Powers must have known that, since the respondent was not participating in the representation hearing, some of its employees would probably have to be called upon to testify concerning matters which might otherwise have been supplied by the respondent's officials at that hearing. The requirement that the employees produce "subpoenas," which Powers imposed, also suggests that Powers knew of the employees' desire to attend the hearing for the purpose of giving testimony. Upon the entire record, and despite Powers' denial, we find, as did the Trial Examiner, that Powers knew that the real purpose underlying the request of the four employees in question for permission to leave the plant was to give testimony at the representation proceedings. But even if Powers could not be said to have had such knowledge, but believed that the employees wanted to attend the hearing as mere spectators, we are convinced, and we find, upon the entire record, that the respondent's action in denying them permission to leave the plant on the occasion in question was an integral part of its campaign to discourage and destroy interest and activity in the employees' efforts at self-organization, and constituted a discriminatory application of its policy with regard to the granting of requests by employees for short leaves.

of its policy with respect to the granting of requests by employees for short leaves, all in violation of Section 8 (1) of the Act.⁴

The record discloses that prior to the incident in question, permission was freely granted to employees to leave the plant during working hours. Employees were given permission to leave because they had "some business to attend to," or wanted to take care of "certain things," or because they had "an appointment." Forelady Seeley⁵ issued leave slips "any time [employees] asked for one." Except for the incident in question, no employee had ever been denied permission to leave the plant during working hours during Seeley's 15-year period of employment with the respondent.

The respondent contends that on the occasion in question, the request for leave was denied, and the requirement that a subpoena be produced was imposed, because "to have permitted indiscriminate absence to attend the hearing would clearly disrupt production [and] the requirement that the necessity of the attendance be evidenced by some official request was not unreasonable" as evidence of the "good faith" of the request and "as safeguard against abuse of the privilege." However, the respondent had no reason to anticipate an "indiscriminate absence" of employees on the occasion in question. It appears that Foreman Powers took the position that no employee would be permitted to leave for the hearing without first producing a subpoena when only one request for leave (that of employee Barker) was presented to him, and that altogether only four employees, out of a total of approximately 180, had applied for leave on the occasion in question or had given any indication of a desire to attend the hearing. The argument advanced by Foreman Powers that if he had granted permission to one employee, he would have been compelled to grant permission to all other employees who requested it, is not convincing, for the respondent could reasonably have modified its position with respect to the granting of the requests for leave had such requests become so numerous that to grant any more would have resulted in a material curtailment of production, just as the respondent could reasonably deny requests of its employees to leave for other personal reasons where such requests become too numerous. Instead, the respondent issued a blanket prohibition against the employees' leaving on the occasion in question, and that prohibition was even extended

⁴ In further support of his conclusion that the respondent's denial of the employees' request to leave the plant on the occasion in question was violative of Section 8 (1) of the Act, the Trial Examiner adopted the broad theory that, in the absence of a showing that production as a whole at an employer's plant would thereby be disrupted, employees have a right under the Act to leave the plant during working hours for the purpose of giving testimony at a Board proceeding, without having to produce subpoenas. On the facts of the instant case, and since we believe that a finding that the respondent's denial of the employees' request was violative of the Act is amply supported on other grounds, we find it unnecessary to pass upon the validity of the afore-mentioned theory.

⁵ Forelady Seeley is a supervisory employee, and we so find.

to non-working time, the respondent having enjoined the employees from leaving the plant that day, even during their rest periods, for any cause. Further, in view of the following admission by counsel for the respondent at oral argument before the Board, it seems incongruous that the respondent should have issued a blanket prohibition on the occasion in question, without at least restricting it to those who were not to appear as witnesses:

The CHAIRMAN. Is that the general position of the Company that you must have subpoenas before you go to a hearing before a representative public body?

Mr. DAVIS [counsel for respondent]. If the Board please, in numerous hearings in which I have represented this Company, we have cooperated in getting the witnesses simply on call. There is no general policy that people must have subpoenas.

Equally revealing is the fact that the respondent penalized the three employees who left the plant for the purpose of giving testimony, by depriving them of their seniority rights, albeit the respondent knew, prior to the imposition of that penalty, that they had in fact testified at the hearing,⁶ and that therefore their original requests to leave had been made in "good faith."

That the motive underlying the respondent's action in denying the requests in question was to impede the successful functioning of the representation proceedings, is further evident from the fact that the respondent failed to participate in such proceedings, coupled with other circumstances detailed below. Schultheis, organizer for the Union which was the petitioner in those proceedings, telephoned the plant, shortly before the hearing, for the purpose⁷ of requesting the presence at the hearing of the four employees in question. After identifying himself, he asked to speak to Superintendent Heinsen,⁸ or to one of these employees (Barker). However, he was refused permission to talk to either. The record further discloses that, after employee Moore was denied permission to leave on the occasion in question, she asked the respondent for permission to leave the plant during her recess period for the purpose of making a telephone call, and that her request was denied. By such conduct, and by its general prohibition against leaving the plant, even during the rest period, for any cause, the respondent prevented the employees from communicating with the Union's representative or Board counsel for the purpose of

⁶ Counsel for the respondent conceded at oral argument before the Board that the respondent had such knowledge at the time the employees were deprived of their seniority rights

⁷ The precise purpose of his telephone call was not expressly communicated by him to the respondent

⁸ Foreman Powers' testimony indicates that Superintendent Heinsen was not at the plant at the time

informing them of the respondent's requirement that a subpoena be produced.

The respondent's course of conduct on the occasion in question must also be appraised in the light of its obvious antipathy to the employees' efforts at self-organization and its campaign to defeat the Union. Thus, on the eve of the election, the respondent, among other things, promised the employees a wage increase and vacations with pay, threatened to close the plant if the Union won the election, removed a number of machines from the plant and advised the employees that they were going to be shipped out of the State, and discharged or compelled the resignation of Forelady Seeley because of her refusal to participate in the respondent's anti-union activities.

Having found that the respondent's conduct in prohibiting the employees in question from leaving the plant was violative of Section 8 (1) of the Act, it follows, and we find, as did the Trial Examiner, that its subsequent action in depriving three of them, (Nichols, Moore, and Norton) of their seniority rights because they left the plant without the respondent's permission, was equally violative of Section 8 (1). Further, we are convinced that such action was an integral part of the respondent's campaign to discourage self-organization among its employees and to defeat the Union, and that such action discouraged membership in the Union within the meaning of Section 8 (3) of the Act, and we so find, as did the Trial Examiner.⁹ Upon the entire record, we further find, as did the Trial Examiner, that the respondent's action in depriving the employees in question of their seniority rights was motivated, at least in part, by the fact that they had given testimony in the representation proceedings, and that such action was therefore violative of Section 8 (4) of the Act. Whether such action be regarded as a violation of Section 8 (1), Section 8 (3), or Section 8 (4) of the Act, we find it necessary, in order to effectuate the purposes and policies of the Act, to order the respondent to restore to these employees their seniority rights.

2. We agree with the Trial Examiner's findings that Forelady Seeley was discharged by the respondent on April 27, 1944, and that such discharge was violative of Section 8 (3) of the Act. We think it clear that Seeley, during the course of her conversation with Superintendent Heinsen earlier that day, withdrew her declaration to resign and offered to remain in the respondent's employ, and that Heinsen, thereafter, discharged her for discriminatory reasons. We are convinced that Seeley's remark to Heinsen, during the course of the aforementioned conversation, that "if it would help matters" she would "recall [her] resignation and stay" because she did not not "want the

⁹ Cf. *Matter of Rockingham Poultry Marketing Cooperative, Inc.*, 59 N. L. R. B. 486, and cases cited therein

girls to walk out," constituted a withdrawal of her resignation. That remark was made immediately after Heinsen called her to his office and complained that he was in a "mess" because the employees were threatening to "walk out" on account of her resignation. By her remark, Seeley plainly indicated that, in view of the employees' reaction to her proposal to leave, she was willing to remain in the respondent's employ. Heinsen then wished to consider the matter and, believing that Seeley might in the future persist in her neutral attitude toward the unionization of the plant, decided to dismiss her, and in fact told three employees that "I just have to let [Seeley] go. This is my own personal decision" and advised Seeley herself that "he was releasing [her] from [her] job."

But even if Seeley could not be said to have been actually discharged, but rather that she resigned, it is clear, and we find, that her resignation was compelled by the respondent's unlawful treatment of her, and that she was accordingly discriminated against, in violation of Section 8 (3) of the Act.¹⁰ With the appointment of Heinsen as superintendent of the respondent's plant in January 1944, at which time the Union was engaged in its organizational efforts, Seeley's position in the plant became precarious.¹¹ Heinsen frequently called Seeley to his office and questioned her as to why she "wouldn't talk against the Union," and "why [she] wasn't for Reliance," observing that if she were for "Reliance," she would "talk against the Union." On one occasion, she was rebuked by Heinsen for suggesting employee Norton for the position of "trainer," since "she [Norton] sponsored union meetings in her own home." On April 25, the day before the election, Heinsen invited Seeley to his office and talked to her about the election. Heinsen said: "You know it cost me a lot of money to move the shaft [referring to the machines which were removed from the plant in an effort to defeat the Union] * * *. Today I threatened to sell the trucks, and now * * * do you know I am playing my trump card, and it is you." Heinsen then urged Seeley to tell the employees that at the election they would be "voting either for Kate Seeley or for Mr. Schultheis [International Representative of the Union]." Seeley declined to do this,¹² and was then told by Heinsen to "go home and think it over that night." The next morning, with the election scheduled in the afternoon, Seeley was again called to the office, where

¹⁰ Cf. *Matter of Chicago Apparatus Company*, 12 N. L. R. B. 1002, 1019, *enp'd*, 116 F. (2d) 753 (C. C. A. 7); *Matter of Sterling Corset Co., Inc.*, 9 N. L. R. B. 858; *Matter of East Texas Motor Freight Lines*, 47 N. L. R. B. 1023, *enf'd* 140 F. (2d) 404 (C. C. A. 5), 13 L. R. R. 727.

¹¹ Forelady Seeley had been in the respondent's employ since 1928, and no contention was made by the respondent that her work was in any way unsatisfactory.

¹² Two days later, Heinsen stated to the employees' committee which attempted to intercede in behalf of Seeley, that Seeley resigned because "he asked her to go up and tell them [the employees], that when they were voting that afternoon that they were either voting for the C. I. O. or her and she wouldn't do it, so that's why."

Heinsen, in the presence of other officials and supervisors, asked her if she "had made up" her mind as to whether or not she would talk to the employees. Seeley replied that she "hadn't slept all night," that she had "thought it over," and that she "didn't intend to do it," observing that she "still had a conscience" and that her husband and son worked in a plant which was unionized. Pilot, an official of the respondent, then intervened and stated that he had heard that Seeley had taken a bribe from the Union. Seeley asked that the accusation be proved. Pilot then requested Heinsen "to produce the evidence," but Heinsen refused. Seeley then told Heinsen that she was resigning, effective April 29. Immediately after the last-mentioned conference, Pilot approached Seeley and told her that he had "seen that Mr. Heinsen had made a nervous wreck out of [her] and had worked on [her] the wrong way," and promised, in return for her attempt to influence employees to vote against the Union, to take her on an inspection tour of the respondent's southern mills and to insure "a good future" for her with the respondent. This offer was declined by Seeley.

It is plain, and we find, that by continuously questioning Seeley's loyalty to the respondent, by urging her to use her influence with the employees to defeat the Union's efforts to organize the plant, by accusing her, in the presence of other officials and supervisors, of taking a bribe from the Union, and, finally, by promising her "a good future" with the respondent and an inspection tour of its southern mills in return for her efforts to induce employees to vote against the Union, the respondent created a situation so unbearable for Seeley and so detrimental to harmonious working conditions in her part, that Seeley had no alternative but to resign. In fact, counsel for the respondent conceded at oral argument before the Board "that she [Seeley] resigned because of difference between her and the superintendent about her * * * conduct with respect to this union, and it is quite true that the record shows that the superintendent tried to get Kate Seeley to do things to discourage this union that he had no right to have her do and that she had no right to do, and it is also equally true that that pressure put upon her so irritated and annoyed her that she resigned."¹³

3. We find that, since the respondent engaged in unfair labor practices prior to the election held on April 26, 1944, the election was not an expression of the uncoerced will of the respondent's employees, and should therefore be set aside, and we shall so order. When we are advised by the Regional Director that the time is appropriate, we shall direct a new election.

¹³ Upon the entire record, we find that the involuntary resignation of Seeley because of her refusal to participate in the respondent's antiunion campaign, discouraged non-supervisory employees' membership in the Union.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Reliance Manufacturing Company, Anamosa, Iowa, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, by depriving any of its employees of their seniority rights, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

(b) Depriving any of its employees of their seniority rights or otherwise discriminating against them because they have given testimony under the Act;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to joint or assist Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Kate Seeley immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority and other rights and privileges;

(b) Make whole Kate Seeley for any loss of pay she may have suffered by reason of the respondent's discrimination against her, by payment to her of a sum of money equal to the amount which she normally would have earned as wages from the date of the discrimination against her to the date of the respondent's offer of reinstatement, less her net earnings during such period;

(c) Restore to Mary Nichols, Rosa Lee Moore, and Hattie Norton the seniority rights of which they have been deprived by reason of the respondent's discrimination against them;

(d) Post at its plant at Anamosa, Iowa, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director of the Eighteenth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including

all place where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material:

(e) Notify the Regional Director for the Eighteenth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the election held on April 26, 1944, among the employees of Reliance Manufacturing Company, at its Anamosa, Iowa, plant, be, and it hereby is, set aside.

NLRB 577

(9-1-44)

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

Kate Seeley

We will restore to the employees named below the seniority rights of which they have been deprived as a result of the discrimination against them:

Mary Nichols

Rosa Lee Moore

Hattie Norton

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization, or because of

any employee's appearance as a witness in any proceeding of the National Labor Relations Board.

RELIANCE MANUFACTURING COMPANY

(Employer)

Dated _____

By _____

(Representative)

(Title)

NOTE.—Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT

Mr. Stephen M. Reynolds, for the Board.

Mr. Paul Y. Davis, of Indianapolis, Ind., and *Mr. Danill D. Tucker*, of Chicago, Ill., for the respondent.

Mr. E. B. Schultheis, of Muscatine, Iowa, for the Union.

STATEMENT OF THE CASE

Upon an amended charge duly filed by Amalgamated Clothing Workers of America (C. I. O.), herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Eighteenth Region (Minneapolis, Minnesota), issued its amended complaint dated June 2, 1944, against Reliance Manufacturing Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (4) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the amended complaint and the amended charge, accompanied by notice of hearing, were duly served upon the respondent and the Union.¹

With respect to the unfair labor practices the amended complaint alleged, in substance, that: (1) the respondent from on or about April 1, 1944, to the date of issuance of the amended complaint advised, urged and warned its employees against engaging in union activities, warned its employees that in the event the Union were designated their collective bargaining representative, their hours of work would be reduced, the supervisory and clerical staff would leave the plant and the plant would close down, interrogated the employees concerning their union membership and activities; advised its employees that the Union could not obtain for them the benefits promised and that, in any event, the respondent would voluntarily give the employees any benefits the Union could obtain for them; interfered with an election conducted by the Board's agents on April 26, 1944, by, in addition to the foregoing acts, promising its employees increases in wages and vacations with pay, and attempting to bribe a supervisory employee to influence other employees to vote against the Union; (2) the respondent, on February 26, deprived Mary Nichols, Rosa Lee Moore and Hattie Norton of their

¹ Upon a protest to the election conducted on April 26, 1944, in the *Matter of Reliance Manufacturing Company and Amalgamated Clothing Workers of America (C. I. O.)*, 55 N. L. R. B. 981, Case No. 18-R-937, the Board, on May 23, 1944, ordered that a hearing be held on the said protest and, on May 27, the Board further ordered that that case and the instant case be consolidated. Pursuant to these orders the notice of hearing hereinabove referred to notified the parties that hearing upon the protest to the election in 18-R-937 and hearing upon the unfair labor practices alleged in the instant case were to be consolidated.

seniority rights because they gave testimony in a hearing before a Trial Examiner of the National Labor Relations Board in Case No. 18-R-937 on February 23, and (3) the respondent discharged Kate Seeley on or about April 27 because she refused to influence employees working under her supervision to vote against the Union in the aforesaid Board election.

Pursuant to notice, a hearing was held in Anamosa, Iowa, before William J. Isaacson, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent, represented by counsel, and the Union, by a representative, participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, was afforded all parties. At the close of the Board's presentation of its case, the Board's counsel moved to conform the amended complaint with respect to formal matters to the evidence adduced. The motion was granted without objection. At the close of the hearing all parties were afforded an opportunity to argue orally on the record before the undersigned and counsel for the Board and the respondent participated in such argument. None of the parties filed briefs, although afforded an opportunity to do so.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

The respondent, an Illinois corporation, with its principal office and place of business at Chicago, Illinois, and 19 plants throughout the country, is engaged in the manufacture, sale, and distribution of clothing. At its plant at Anamosa, Iowa, the plant herein involved, the respondent is engaged in the manufacture of shirts, of which it ships daily more than 2,000 to points outside the State of Iowa. Similarly, it purchases for use in its operations at Anamosa large quantities of cotton piece goods which are shipped to the plant from points outside the State of Iowa.²

II. THE ORGANIZATION INVOLVED

Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondent.

III THE UNFAIR LABOR PRACTICES

A. *Sequence of events*³

On February 23, 1944, the Board, pursuant to a petition filed by the Union alleging, among other things, that a question concerning the representation of the respondent's employees had arisen, conducted a hearing in Anamosa in Case No. 18-R-937. Although the respondent was notified of the aforesaid hearing it did not appear or participate therein. Accordingly, on the night before the hearing, E. D. Schultheis, the Union's representative, met with 5 of the respondent's employees, Mary Nichols, Ethel Barker, Hattie Norton, Rosa Lee Moore, and

² These findings are based upon admissions contained in the pleadings.

³ Unless otherwise indicated, the findings of fact hereinafter set forth are based upon uncontradicted evidence.

Bart Kelton,⁴ and advised them that, since the respondent did not intend to participate in the aforesaid hearing, it would be necessary for them to testify with respect to the character of the respondent's business and the physical proportions of the plant. He instructed them to request permission of their respective supervisors the next morning "to come to the hearing and give testimony." Pursuant to Schultheis's request 4 of the aforesaid employees attempted to secure such permission.⁵ According to Nichols, she asked her forelady, Katherine Seeley, before work began that morning whether she could have a "leave slip" ⁶ since she "had to appear at a hearing of the National Labor Relations (*sic*) over [at the courthouse] at ten o'clock," that she was to be a witness.⁷ Forelady Seeley, while not giving Nichols a leave slip at the time, advised her that she would grant the request. Similarly, at about 8 o'clock that morning Moore asked Forelady Seeley for a leave slip, explaining "I have been asked to attend a hearing of the Labor Board at the Court House at 10 o'clock," and, as with respect to Nichols' request, Seeley replied that she would grant such permission. At about the same time Norton made the same request of her forelady, Labreda Gearhart, who replied that she would consider it. Shortly thereafter Forelady Isabell Rogers, of whom the same request had been made by employee Ethel Barker,⁸ inquired of Robert Powers, the stitching room foreman, whether or not to grant the request. After her conversation with Powers, Rogers, according to Seeley, reported that Powers had announced, "Positively no girl goes." Seeley at once sought confirmation of this statement from Powers,⁹ who repeated, "Nobody leaves this building today. There will be no yellow slips given out. Anyone leaving will be automatically fired." Seeley thereupon explained the reason that the girls desired permission to leave the plant.¹⁰ Powers remained adamant, declaring, "If they have a subpoena, we can't stop them, but if they don't nobody leaves

⁴ Nichols, Norton and Moore became Union members in November or December 1943.

⁵ There is no evidence in the record that Kelton asked permission to testify at the hearing.

⁶ Several months prior to the hearing the respondent promulgated a rule requiring its employees to secure a "leave slip" from their supervisors when they desired to leave the plant during working hours. The rule further provided "Any employee leaving the plant during working hours without permission will be considered as having severed his employment."

⁷ Seeley testified that the above conversation took place the preceding day. Since, however, it was impossible under the facts hereinabove related for the request to have been made prior to the day of the hearing the undersigned finds that the request was made, as testified by Nichols, on that day. Seeley, in her unspecific testimony concerning the above conversations, omitted any reference to Nichols' advising her that she, Nichols, was to be a witness. In view of Nichols' explicit account of the aforesaid conversation, coupled with the undisputed fact that that was the purpose for which she sought permission to leave the plant, the undersigned finds that the conversation took place as related by Nichols.

⁸ Ethel Barker testified that she made her request the end of the previous day. For the reasons already enumerated, the undersigned finds that the request was made on the day of the hearing.

⁹ According to Powers, Seeley inquired with respect to Norton, as well as Nichols and Moore.

¹⁰ Powers, while testifying that he knew "why they wanted to leave," claimed that Foreladies Seeley and Rogers merely informed him that the employees in question desired to attend the hearing, making no reference to the giving of testimony. Powers admittedly made no inquiry concerning the purpose for which the employees desired to attend the hearing. If Powers had been ignorant of that purpose it is unlikely that he would have failed to make such inquiry. Moreover, it is clear from Powers' immediate reference to subpoenas that he was aware of the purpose for which leave was requested. These facts, coupled with the fact that Seeley had been previously advised that the aforesaid employees desired to attend the hearing in order to testify, convinces the undersigned that Seeley, in turn, so informed Powers.

this building today." Seeley relayed this information to Nichols and Moore,¹¹ Gearhart likewise advised Norton that no "leave slips" would be issued that day.

This prohibition against "leave slips" was not limited to working hours but was applied as well to the employees' recess periods. Thus, that same morning, Moore asked Edith Sunday, the respondent's personnel director, for permission to go to her home during the 10-minute recess period beginning at 9:30. Since Moore's house was near the plant, she was customarily granted such permission. On this occasion, however, such request was for the first time denied. According to Moore, Sunday, after discussing the matter with Powers, informed Moore that "Bob [Powers] said [she] couldn't leave the building."¹²

Thereafter, shortly before 10 o'clock, Nichols, Moore and Norton left the plant and testified at the aforesaid hearing.¹³ As they were leaving, Janice Crow, the respondent's office manager, asked whether they had leave slips. They replied in the negative. Powers upon discovering their absence, instructed Personnel Director Sunday to remove their time cards from the time clock rack. Shortly before 1 o'clock upon returning to the plant and reporting for work, Nichols, Moore and Norton noted that their time cards had been removed. They thereupon inquired of Office Manager Crow concerning the whereabouts of their time cards. She replied, "Well, you really didn't expect to find them there up in the rack." Upon leaving the office they were intercepted by Powers and Bruce Wright, foreman of the finishing department, who in the absence of Superintendent J. J. Heinsen, was in charge of the plant that day. Wright advised them to return to work and, pursuant to his instructions, Powers gave each of them her respective time card. Powers explained at the hearing that later that morning, after he had removed the aforesaid 3 employees' time cards, Wright telephoned Superintendent Heinsen at the respondent's main office in Chicago and Heinsen instructed that they be permitted to return to work. In accordance with these instructions Wright advised Powers that upon their return to the plant "Let them go back to work." Powers further revealed that upon their return he inquired whether they had been subpoenaed and that, although replying in the negative, they declared that if they had been restrained from leaving the plant Schultheis would have secured subpoenas for them.

Nichols, Moore, and Norton thereupon returned to their machines and continued to work without incident until February 26 when they were deprived of their seniority rights under the following circumstances. On that day Moore, upon hearing it rumored among her fellow employees that Nichols, Norton and she were to lose their seniority rights, confronted Powers with said rumor. Denying that the rumor had any basis in fact, he assured Moore that their leaving the plant 3 days before was "a forgotten matter." Contrary to this assurance Superintendent Heinsen met with Powers, Wright and Foreladies Neledine Bunce, Rogers, Gearhart and Seeley and proposed withdrawing the seniority rights of the aforesaid employees. In support of his position, Heinsen, although acknowledging

¹¹ Nichols and Moore denied that Seeley informed them that they would be granted leave if they had subpoenas. In view of the fact that Powers so advised Seeley it is unlikely that Seeley failed to relay this information to Nichols and Moore. Accordingly, the undersigned rejects their denials.

¹² Powers denied that the above request was called to his attention. He admitted, however, that his general prohibition against leaving the plant that day applied to the recess periods. Sunday, although testifying, did not testify with respect to the above incident. The undersigned rejects Powers' denial and finds that, as Moore testified, Sunday, upon specific instructions from Powers, denied Moore's request to leave the plant during the morning recess.

¹³ Barker, whose request had also been denied, remained in the plant and did not testify in the aforesaid representation hearing.

that a group of girls who had left the plant previously had been permitted to return to work without disciplinary action,¹⁴ pointed out that he had to begin to mete out punishment sometime "and it might just as well be [now] as any other." Heinsen thereupon called the aforesaid 3 employees into the office and announced that he had thought the matter over and concluded that since their leaving without permission was in violation of the respondent's rules they should be punished. Therefore, as an example to the other employees, he was depriving them of their seniority rights. They protested that they were ignorant of the existence of such a rule. Moore further advised Heinsen that they could have secured subpoenas. Heinsen replied that the rule book had been distributed among the employees after the incident involving the "button sew" girls, but that, in any event, ignorance of the rule provided no defense.¹⁵ He predicted that they would never have their seniority rights restored. Thus stripped of their seniority, the aforesaid 3 employees, returned to their respective operations.¹⁶

On March 31, 1944, about a month after the above hearing, the Board, pursuant to the Union's petition, directed the holding of an election among the respondent's employees to determine whether or not the employees within the unit found to be appropriate desired to be represented by the Union. In accordance with the aforesaid direction the Board's Regional Office in Minneapolis made arrangements to conduct an election among the respondent's employees on April 26.

The announcement of the election and the fixing of the date upon which it was to be held signaled the inauguration of a campaign by the respondent to undermine the Union and insure its defeat.¹⁷ Thus, about April 15, Superintendent Heinsen, who played the leading role in the respondent's anti-union drive, summoned Nichols to his office and abstrusely remarked that he wished to talk to her and the other employees about "You know what." He promptly revealed, however, that the Union was to be the subject of his talk. He warned that "it was only fair to tell the girls that if the Union won the election that the management, office force and supervisors were going to take a long vacation." In answer to Nichols' comment that in that event the respondent's main office in Chicago would provide the plant with replacements he pointedly inquired, "What makes you think that"? He suggested that Schultheis, the union organizer, and Norton could take over the operation of the plant in the absence of the respondent's present management. Heinsen thereupon asked Nichols what benefits she expected to derive from the Union, to which she replied, increases in wages and vacations with pay. Heinsen assured her that "if the girls would just give him a chance that he would do all he could." Similarly, he threatened Moore when she came to his office to request permission to post election notices in the plant that rather than spend time arguing with a union grievance committee the supervisors and office force would "walk out." In reply to Moore's question concerning

¹⁴ Heinsen's reference was to the unauthorized withdrawal from the plant of some 7 "button sewers" about February 10, 1944. The girls in question left the plant around the noon hour of one day and did not return to the plant until the following day. Insofar as the record discloses there was no legitimate reason advanced for their absence.

¹⁵ It is unnecessary to a resolution of the issues in the instance case to determine whether the employees in fact had knowledge of the rule.

¹⁶ Norton, a collar press and band press operator at the time of the above described incident, had been in the respondent's employ continuously for 8 years. Moore's and Nichols' seniority dated from February and November, 1942, respectively.

¹⁷ The following recital of facts concerning the respondent's efforts to bring about the Union's defeat in the forthcoming election is in every instance supported by uncontradicted evidence. The respondent's officials and supervisory employees to whom the anti-union statements and conduct are attributed were not called upon by the respondent to testify at the hearing.

the respondent's attitude towards vacations with pay, he bluntly declared that "he would give the non-union factories anything that he could before the union factories got it. That the Union had been asking for vacation with pay for so long, and hadn't gotten it at the rest of the Reliance factories . . . and he would give it to [the Anamosa plant] if the Union didn't go in." In the same fashion, about 3 or 4 days before the election, Heinsen summoned to his office employee Zella Duncan and declared that since she had heard the Union's "side" he had a right "to present" the respondent's side. He reiterated that if the Union won the election, the management, office, and supervisory force "would leave" the plant, that "the factory would close down because of union activities", adding that while he knew that it was illegal to shut down the plant ostensibly because of organizational activities "there were fifty legal ways of closing down a factory, and he knew them all."

Heinsen graphically illustrated to the employees that the foregoing were not empty threats. During working hours one day shortly before the Board election, Heinsen had a number of machines removed from the plant and placed upon a moving van. That Heinsen removed and transported the said machinery in order to create anxiety among the employees was admitted by him in a conversation with Forelady Seeley.¹⁸

Office Manager Crow, supplementing and underscoring Heinsen's above described activities, utilized the removal of the machinery to substantiate her threats and predictions made in an address which she delivered to the employees on April 18, a week before the election. On that date the employees were urged and instructed by the office force and their respective foreladies, among others, to attend a "non-union" meeting of "loyal" employees to hear the respondent's "side of the story." Although the sole supervisory employee to address the meeting was Office Manager Crow; in attendance at the meeting, were Foreladies Gearhart, Neledine Bunce, Seeley and Foremen Wright and Powers. She bluntly informed the assembled employees that if they "thought the H. & W. Truck [moving van] was backed up to the back door of the factory to haul the machines across the street, [they] were crazy, that [the machines] were going to be shipped out of the state, to a different factory to be put in use." She warned that if "anything were changed," the supervisors, office force, and foreladies would "walk out," and the employees' husbands in the armed services would return to a deserted town. She claimed that Schultheis' promise of a "50¢ minimum" could not be fulfilled, that the only method by which they could secure wage increases was by government directive. But, she continued, the minimum requested by the Union was applicable to overtime as well as straight time, and would result in a wage decrease since certain of the employees were getting overtime rates for overtime work. She further promised that by the beginning of that summer they would receive vacations with pay. In conclusion, she urged them to "vote right" in order that they continue to have a plant in Anamosa. So that they not misinterpret what she meant by "vote right" she exhorted the employees to do everything Superintendent Heinsen desired "because he would lay down his life" for them.

Before the election, pursuant to Heinsen's and Crow's promises hereinabove referred to, Foreman Wright and Forelady Thelma Bramer informed several employees under their respective supervision that in the event the present management continued the employees would receive vacations with pay. Finally, the respondent announced over the plant public address system that the employees were to receive vacations with pay.

¹⁸ The respondent adduced no evidence showing that such removal of machinery was dictated by legitimate economic considerations.

Nor did the respondent rely entirely upon the activities of the local management but, on April 26, a few hours before the election polls opened, the respondent's employees were assembled in the plant during working hours to hear an address by A. T. Bard, the respondent's president. Accompanying President Bard from Chicago to Anamosa and in attendance at the meeting, were the respondent's officials Guthunz, an assistant to President Bard, and Pilot.

Bard opened his address by reminding the employees that the respondent had done a lot for them and would continue to do more, and that he hoped they would "do their best by him." He thereupon urged them to vote in the election to be held that day, pointing out that a failure to vote was tantamount to voting for that which they opposed. He then announced that the respondent would apply for a "2¢ raise" for them just as it had for 4 of the respondent's southern plants, but that nothing could be done with respect to the wage increase until the current "labor controversy" was terminated. In reply to an inquiry from the audience as to whether these southern plants were unionized he pointed out "they were not." Bard failed to reply, however, to an inquiry from employee Rita Remington as to why he was opposed to the Union's joining in such application. With respect to vacations with pay he announced that if Heinsen had made such a promise he would grant the same.

Later that same day, and while the election was in progress, Pilot accosted employees Duncan and Remington upon the main thoroughfare of Anamosa and inquired concerning the progress of the election. Remington replied, "In our favor, we hope." He thereupon asked what benefits they expected to derive from the Union. Remington, expressing her dissatisfaction with the manner in which Bard had avoided answering her question, responded, "Well, I don't think there is anything to lose." Pilot rejoined, "It only makes a difference of \$25 00 to \$30 00 in dues."

The Union was defeated in the election, 66 to 63.

Throughout the respondent's foregoing campaign Superintendent Heinsen attempted, without success, to enlist the aid of Forelady Seeley. Thus, he repeatedly inquired of Seeley why she refused to talk against the Union, why she "wasn't for Reliance." On each of these occasions Seeley protested that she was not opposed to the respondent. He countered that if she were "for Reliance" she would be against the Union.³⁹

Heinsen's attempts to induce Seeley to take part in the respondent's anti-union drive were climaxed on April 25, the day before the election. On that day Heinsen called Seeley into his office and announced, "You know it cost me a lot of money to move the shaft. It also cost me money to give the dinner. Today I threatened to sell the trucks, and now, do you know I am playing my trump card, and it is you." He thereupon instructed her to inform the employees that they were "voting either for Kate Seeley or for Mr. Schultheis." Seeley refused to carry out his instructions. Early the next morning Heinsen again summoned Seeley to his office and sought to persuade her. In addition to Heinsen, Guthunz, Pilot, and Jimmy Goody, foreman of the cutting room were present. Seeley informed Heinsen that she adhered to her position of the previous day. She explained that she still had a conscience, and that both her husband and son worked in a unionized plant. Thereupon, Pilot accused her of accepting a bribe from the Union. Pilot,

³⁹ During one of these conversations Heinsen suggested that since Seeley had too much to do he would withdraw some of her duties and functions. Seeley instead recommended that he assign Norton as a "trainer" to instruct new employees. Whereupon, Heinsen retorted, "What [are you] thinking of to suggest Hattie Norton, when she sponsored union meetings in her own home"? It was only after the Union was defeated in the election that Norton was promoted to a "trainer."

who was asked by Seeley to produce such evidence, turned to Heinsen and made the same request of him. Heinsen ignored these requests. Seeley, justifiably incensed at the serious, although unsupported, charge which had been levelled against her asked for her release. Heinsen refused, declaring "I won't give you any release." Seeley nevertheless replied, "I am leaving Saturday." She was thereupon asked to go into another office while the others had a discussion among themselves. Upon her return to the office Pilot spoke with her alone. Pilot, after declaring that it was plain that Heinsen had "worked on [her] the wrong way," suggested that she go upstairs and advise the girls to vote against the Union. As an inducement, he promised her a trip through the respondent's southern mills and assured her that she had a "good future" with Reliance. Seeley, still refusing to participate in the respondent's anti-union drive, returned to her work.²⁰

On Thursday, the day after the election, Seeley advised several of the employees that she was resigning that Saturday. The female employees, who were desirous of retaining Seeley in the respondent's employ, attempted to intercede with Heinsen in her behalf. He agreed to discuss the matter with 3 of their representatives. Accordingly, Maxine Harms, Crystal Aldrich, and Mary Nichols were chosen by the employees to see Heinsen. Upon their arrival in his office Heinsen volunteered that he could do nothing concerning the retention of Seeley since she had resigned and he had merely accepted her resignation. They pointed out that Seeley must have had good cause for her action. Heinsen replied that Seeley violated the prime obligation of a supervisory employee, loyalty to the employer, that Seeley, "the key to the factory," had refused the respondent's request "to go up and tell them that when they were voting [yesterday] afternoon that they were either voting for the C I O or her." In reply to their suggestion that he put the question of Seeley's retention to a vote of the employees, he agreed with the reservation that 75 percent of the employees must vote affirmatively before he would be obligated to retain her. During this conversation he disclosed that he had had two main objectives upon coming to the Anamosa plant; "one was to keep the C I O. out, and the other one was to get the factory 110 percent by the first of July." He boasted, "I have already accomplished the first, and now I am working on the second." He consented to speak with Seeley and suggested that they return to their work in the meantime.

Heinsen thereupon called Seeley into his office and bemoaned, "Yesterday I was in a mess. Today I am in a worse one. I am threatened with a walkout today." Seeley thereupon offered, "Well, if it would help matters I would recall my resignation and stay. I don't want the girls to walk out. I want them to stay." He replied, "Well, you have opposition, the girls [are] going to take a vote, a seventy-five percent vote, and I will have to think it over." He then betrayed the basis of his hesitation, declaring, "How do I know if this issue ever came

²⁰ About 20 minutes after Seeley left Pilot she received a telephone call from Clifford Niles, a local business man, asking her to come to his office. Upon her arrival he said "You have a lot of influence with the girls at the factory. We business men don't want that union in this town. I have a lot of money invested in property, and we want Reliance to stay here, and you are the only one that can keep the Union out. I will make it worth your while, and I will see even that you have a home to live in and I will give you \$250.00 cash right now if you go down and tell the girls to vote against the Union." Seeley, declaring that she would consider the proposal, returned to the plant. The Board's counsel contends that Niles was acting at the request and in behalf of the respondent. Upon all the circumstances surrounding this conversation, with special emphasis upon the similarity between it and the conversation which immediately preceded between the respondent's officials and Seeley, and the proximity in time between the two conversations, the undersigned finds some basis for the Board's contention. The undersigned, however, finds it unnecessary to decide this question and bases no finding of an unfair labor practice upon the foregoing conversation.

up again, would [you] still be the same as [you were] or would [you] be for Reliance"? Seeley made no reply.

Later that afternoon, however, he advised Harris, Aldrich, and Nichols, "I just have to let Kate go. This is my own personal decision; I have had no outside help whatsoever." After work that evening Heinsen also advised Seeley that "he didn't want [her] to blame anyone else but him, but he was releasing [her] from [her] job," that her pay check and release would be in the office the next morning.²¹

B. Concluding findings

1. Interference, restraint, and coercion

The foregoing review of the evidence leaves the undersigned no alternative but to find that the respondent flagrantly interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed them under Section 7 of the Act. The respondent's threats to close the plant and remove its machinery, and the actual removal of some of its machinery, its promise of a wage increase and vacation with pay, and subsequent grant of the latter, in order to induce the employees to vote against the Union, its grilling of employees concerning their union affiliation, its efforts to induce a supervisory employee to campaign against the Union, are all recognized forms of interference, restraint, and coercion.²²

2 The discharge of Seeley

Counsel for the respondent contends that: (1) Seeley was not discharged but resigned; and (2) she "was not exercising any right granted by the National Labor Relations Act"

The respondent's first contention merits but brief discussion. It is plain from the foregoing facts, all of which are based on uncontradicted evidence, that, on April 27, Seeley, in her first conversation with Heinsen that day, withdrew her declaration to resign, which declaration the respondent had provoked, and offered to remain in the respondent's employ. It is further established that Superintendent Heinsen understood Seeley's action to constitute a withdrawal of her resignation. Nevertheless, he decided to discharge her as punishment for her past refusals to take part in the respondent's anti-union campaign, and because he was fearful that she would pursue the same course of action in the future. In fact, Heinsen so advised Seeley as well as the three employee representatives who interceded in her behalf.

Nor does the respondent's contention that Seeley was not exercising rights granted her under the Act preclude a finding that her discharge was violative of the Act. A discharge to discourage union membership is no less a violation of

²¹ He offered to pay her for an additional period of 3 or 4 weeks until she secured other work, but Seeley declined this offer.

²² The statements of the respondent's officials and supervisory employees hereinabove set forth, including President Bard's address to the employees, are clearly not expressions of opinion or "argument temperate in form" as the Second Circuit Court of Appeals held the statements involved in *N L R B v American Tube Bending Co*, 134 F. (2d) 993-995, to be. On the contrary, these statements containing threats of economic reprisals, viewed against a background of employer hostility to the Union and its adherents, including the discriminatory withdrawal of 3 employees' seniority rights and the discriminatory discharge of the 4th employee, as found below, were not merely an expression of a point of view, but obviously constituted "pressure exerted vocally" *N L R B. v. Virginia Electric & Power Co*, 319 U S. 533. See also *Matter of Van Raalte Company, Inc*, 55 N. L. R. B. 146; *Matter of Trojan Powder Co.*, 41 N. L. R. B. 1308, enf'd 135 F. (2d) 337 (C. C. A. 3); *Matter of Peter J. Schweitzer, Inc.*, 54 N. L. R. B. 813, 144 F. (2d) 520 (App. D. C.); *Reliance Mfg Co v. N. L. R. B.*, 125 F. (2d) 311 (C. C. A. 7), adjudicated in contempt, 143 F. (2d) 761 (C. C. A. 5).

Section 8 (3) of the Act when it is directed against a non-union employee or one who is ineligible to membership in the Union involved. The discriminatory discharge of a supervisory employee because he refuses to aid his employer in restraining employees from voting for a union itself discourages union membership among the employees, especially where, as here, the respondent advances such reason for the discharge and communicates it to the other employees. Under these circumstances the discharge of Seeley is clearly discriminatory within the meaning of the Act. The undersigned finds that the respondent by discharging Seeley, a forelady, on April 27, 1944, discriminated in regard to her hire and tenure of employment, and has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed them under Section 7 of the Act.²³

3. The withdrawal of Nichols', Moore's and Norton's seniority rights

The respondent contends that its withdrawal of Nichols', Moore's, and Norton's seniority rights was motivated solely by legitimate economic considerations, the maintenance of production and plant discipline. In support of this contention the respondent urges that their leaving the plant was in violation of Foreman Powers' orders that no employee leave the plant to testify without a subpoena and, consequently, comes within the purview of the respondent's established rule that any employee unauthorizedly leaving the plant "will be considered as having severed his employment." The respondent therefore contends that it was warranted in penalizing these three employees in the above manner. Upon the facts hereinabove set forth, the undersigned finds the respondent's contention to be without merit.

In the first place, the respondent's restraint upon its employees' right to give testimony in a Board proceeding, *per se*, constitutes an infringement upon their rights guaranteed under the Act. It is the public policy of the United States, as expressed by Congress in Section 1 of the Act, to encourage the "practice and procedure of collective bargaining" and, as Congress specifically recognized, to achieve that goal, it was essential to create administrative machinery to provide for the selection of the employees' collective bargaining representatives (Section 9). Moreover, Congress, in entrusting this function, to the Board sought to secure for the Board free and unimpeded access to the evidence required to make the requisite determinations. Thus, Section 8 (4) makes it illegal for an employer "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act." In the interest of securing a full and adequate hearing, an employee is protected against subsequent employer reprisal. It is equally necessary to prevent an employer from, in the first instance, imposing restraints upon an employee's right to testify. To permit an employer to forbid an employee to leave the plant to testify would place the employer in a peculiarly strategic position to interfere with the administrative process. Thus, at the threshold, he could interfere with the Board's processes and impair the employees' rights guaranteed them under the Act. This invasion of and interference with the employees' right of self-organization and impairment of the administrative process is no less violative of the Act by reason of its limitation to employees who are without subpoenas. Employees are not deprived of their right to give testimony under the Act by virtue of the fact that they testify willingly; whether or not a subpoena is required to issue is a mat-

²³ *N L R B v. Skinner & Kennedy Stationery Company*, 113 F (2d) 667 (C C A 8), enf'g 13 N L R B 1186. *N L R B v. Richter's Bakery*, 140 F (2d) 870 (C C A 5), enf'g, 40 N L R B. 450; *Matter of Ronrico Corporation and Puerto Rico Distilling Company*, 53 N L R. B. 1137, 1169, cf *Matter of Soss Manufacturing Co., et al*, 56 N L R B 348

ter solely for the witnesses' determination. This statutory right takes on added importance in the instant case where the employer failed to participate in the representation hearing, thereby depriving the Board of its primary source of information and compelling the Board to rely upon the testimony of the respondent's employees.

Nor has the respondent advanced any cogent reason or special circumstance in justification of its interference with the administrative process and the rights guaranteed its employees under the Act, the prohibition bears "no reasonable relation to the efficient operation of the plant or business." *N. L. R. B. v. The Denver Tent and Awning Company*, 138 F. (2d) 410 (C. C. A. 10). The respondent's claim that the subpoena requirement was imposed in order to prevent a mass withdrawal of its employees to attend the hearing is implausible upon the facts of this case. Only 4 of the respondent's 180 employees asked for such permission, and, as the respondent was fully aware, all 4 of these employees made such request in order to testify.²⁴ That the absence of but 4 employees out of a total of 180 employees is not disruptive of production is plain from the figures themselves. Moreover, Forelady Seeley, of whom request to leave had been made by 2 employees, obviously did not consider their absence disruptive of production since, prior to her conversation with Powers, she advised both employees that she would grant their requests. That the prohibition had no reasonable connection to production is conclusively demonstrated by the fact that it applied to the recess periods as well as working hours. Thus, Moore, who was customarily permitted to go home for the 10-minute morning recess, was this day denied such permission. Nor did the respondent exhibit similar concern regarding the effect upon production of its anti-union campaign. Superintendent Heinsen had no compunctions about removing machinery from the plant in order to coerce the employees into voting against the Union. Similarly, the entire plant was closed down during working hours the day of the election in order to enable President Bard to deliver an anti-union address to the employees.²⁵

In any event, the respondent's motive in denying the employees' requests for leave and, 3 days later, depriving Nichols, Moore, and Norton of their seniority rights, was to deny to its employees the right to give testimony. As hereinabove found, the prohibition bore no plausible relation to the operation of the plant. In addition, while it was broad enough to prevent any employee from leaving the plant either during working hours or recess periods the day of the hearing, there is no evidence in the record that any employee either before or since the hearing has been denied such permission. On the contrary, all of the witnesses who testified respecting such requests, including Forelady Seeley, declared that such permission was freely granted in every case. The period of proscription was thus carefully chosen for the sole purpose of preventing the employees from testifying. Moreover, in marked contrast to the drastic punishment meted out to Nichols, Moore, and Norton is Heinsen's action of 2 weeks before in allowing 7 employees, who unauthorizedly left the plant for a half day, to return to work without any disciplinary action whatsoever.

Upon all of the foregoing facts, and the entire record, the undersigned finds that the respondent's application of its rule²⁶ constituted a direct interference

²⁴ Powers announced the above prohibition when he knew of but one request.

²⁵ It should be noted that if the respondent had been sincerely concerned regarding the hearing's effect upon production it would have attempted to arrange with the administrative officer in charge of the hearing to set the hearing's sessions so as not to interfere with production. The respondent chose, instead, to ignore the hearing.

²⁶ The respondent does not strengthen its position by reference to the rule prohibiting leave without supervisory permission, in the absence of which an employee is considered to have severed his employment. This rule must be read in the light of the statute, insofar as its application impinges upon the statutory rights of the employees it is invalid.

with the employees' rights under the Act, and an illegal restraint upon the Board's processes. The undersigned further finds that the respondent, whose basic anti-unionism is uncontrovertibly established, announced and implemented said prohibition for the purpose of interfering with its employees' rights to give testimony, and that Nichols, Moore, and Norton were deprived of their seniority rights because, disregarding the respondent's desires, they gave testimony under the Act; the respondent thereby interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

It is found that the activities of the respondent set forth in Section III above, occurring in connection with the operations described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Since it has been found that the respondent discriminated in regard to the hire and tenure of employment of Kate Seeley, it will be recommended that the respondent offer her immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay she may have suffered by reason of such discrimination by payment to her of a sum of money equal to the amount she normally would have earned as wages during the period from the date of the discrimination against her to the date of the respondent's offer of reinstatement to her, less her net earnings²⁷ during such period. Since it has been found that the respondent discriminatorily deprived Mary Nichols, Rosa Lee Moore and Hattie Norton of their seniority rights previously earned and enjoyed, it will be recommended that the respondent restore to each of them the seniority rights to which she normally would have been entitled, absent the respondent's discrimination.

Upon the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Amalgamated Clothing Workers of America (C. I. O.), is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Mary Nichols, Rosa Lee Moore, Hattie Norton, and Kate Seeley, and thereby discouraging membership in Amalgamated Clothing Workers of America (C. I. O.), the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

²⁷ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.* 311 U. S. 7.

3 By discriminating against Mary Nichols, Rosa Lee Moore and Hattie Norton because they gave testimony under the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (4) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, the undersigned recommends that the respondent, Reliance Manufacturing Company, its officers, agents, successors, and assigns shall:

1 Cease and desist from:

(a) Discouraging membership in Amalgamated Clothing Workers of America (C. I. O.), or in any other labor organization of its employees, by discharging any of its employees, by depriving any of its employees of their seniority rights, or in any other manner discriminating in regard to the hire or tenure of employment or any term or condition of their employment;

(b) Discriminating against any employee because he or she has given testimony under the Act;

(c) In any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Amalgamated Clothing Workers of America (C. I. O.), or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

(a) Offer Kate Seeley immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges;

(b) Make whole Kate Seeley for any loss of pay she may have suffered by reason of the respondent's discrimination in regard to her hire and tenure of employment, by payment to her of a sum of money equal to that which she normally would have earned as wages from the date of the discrimination against her to the date of the respondent's offer of reinstatement, less her net earnings²⁸ during such period;

(c) Restore to Mary Nichols, Rosa Lee Moore, and Hattie Norton the seniority rights of which they have been deprived by reason of the respondent's discrimination against them;

(d) Post immediately in conspicuous places at its plant in Anamosa, Iowa, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a), (b), and (c) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b) and (c) of these recommendations; and (3) that the respondent's employees are free to

²⁸ See footnote 27, *supra*.

become or remain members of Amalgamated Clothing Workers of America (C. I. O.), and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization;

(e) Notify the Regional Director for the Eighteenth Region, in writing within ten (10) days from the date of the receipt of the Intermediate Report what steps the respondent has taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that he has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

WILLIAM J. ISAACSON,
Trial Examiner.

Dated September 21, 1944.